negligent defendant may also be estopped as against the named payee who has purchased innocently.

There is clearly a sharp distinction between such cases as *Foster* v. *Mackinnon* and *Lewis* v. *Clay*, and the cases where the defendant has really intended to enter into the contractual obligation represented by the negotiable instrument upon which he has placed his name. In the latter cases, the defendant has actually made the note in question, and, though he has been induced to sign his name by fraud or duress, he is neverthe less liable to a purchaser for value without notice.

THE PAYEE AS A HOLDER IN DUE COURSE. — The case of *Lewis* v. *Clay* discussed in the preceding note, is also of interest because of Lord Russell's *dictum* that the plaintiff as named payee was an immediate party, and could not, therefore, be regarded as a holder in due course, though he paid value and took without notice.

Lord Russell, in support of this view, relies chiefly upon the Bills of Exchange Act. It would seem, however, that by a proper interpretation of that statute, such a payee as the plaintiff in the case under consideration should be regarded as much a holder in due course as a subsequent transferee; and, apart from the statute, Lord Russell's position is clearly inconsistent with the overwhelming weight of authority both in England and the United States. See, among other cases, *Masters* v. *Ibberson*, 8 C. B. 100; *Watson* v. *Russell*, 31 L. J. Q. B. 304; *Fairbanks* v. *Snow*, 145 Mass. 153; *Lucas* v. *Owens*, 113 Ind. 521, and cases cited. Apparently the courts of only one jurisdiction hold the contrary opinion. See *Camp* v. *Sturdevant*, 16 Neb. 693. Moreover, it is conceived that on strict legal principle the *dictum* cannot be supported. The payee, in such a case as *Lewis* v. *Clay*, purchases the legal title to an instrument, complete and regular on its face, for a valuable consideration and without notice of fraud, duress, or lack of consideration. Under such circumstances, to subject the plaintiff to all the defences that might be raised against an immediate party privy to the whole transaction, would not only work injustice, but would be contrary to well-established principles of law as to the nature of purchase for value without notice.

The provisions of the English Bills of Exchange Act in regard to a holder in due course have been incorporated into the Negotiable Instruments Law, which has been already enacted in several of our States, and American lawyers, therefore, will be especially interested in watching the influence of Lord Russell's position upon future decisions. It is not believed that either the English or the American courts will change their present opinion.

RECAPTION OF A RAILROAD SEAT. — An interesting and unique case in railroad law was recently decided in one of the English lower courts (see Albany Law Journal, Jan. 8, 1898). A gentleman travelling in a train temporarily left his carriage at one of the stations, and took the usual precaution to reserve his seat by leaving therein his umbrella and newspapers. While absent, another passenger seized his seat, and refused to give it up until forcibly ejected by the former occupant. The ejected passenger brought an action for damages against the original holder of the seat. The action was dismissed, and a counter-claim for similar damages sustained. The court said that this universal mode of